



Guidance for policy makers
and practitioners on regularisation
mechanisms for people transitioning
into adulthood

Acknowledgments:

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Glossary

Ageing out refers to the loss of rights children experience when turning 18, and the UN Convention on the Rights of the Child and other child-specific provisions no longer apply to them.

A **care leaver** refers to a young person who was in care (outside of their parental home) during their childhood.¹

A **child** is any person below the age of 18 years old.^{2 3}

A **durable solution** is either integration in the country of residence, resettlement or reunification with family members in the country of origin or in a third country. It is “used here to mean one that protects the long-term best interests and welfare of the child and is sustainable and secure from that perspective. The outcome should ensure that the child is able to develop into adulthood, in an environment which will meet their needs and fulfil their rights as defined by the [UN Convention on the Rights of the Child] and will not put the child at risk of persecution or serious harm.”⁴

A **guardian** can be understood to be “a person who is appointed or designated to support, assist and, where provided by law, represent unaccompanied or separated children in processes concerning them. (...) The guardian acts independently to ensure that the child’s rights, best interests and well-being are guaranteed.”⁵ The person or organisation (which in turn is represented by a staff member/person) “acts as a link between the child and all other stakeholders with responsibilities towards him or her.”^{6 7}

Legal aid is “legal assistance provided by lawyers to persons free of charge to ensure they can effectively exercise their right to access justice.”⁸

1 OECD, 2022, [Assisting Care Leavers. Time for action](#)

2 Article 1, UN Convention on the Rights of the Child.

3 Note that, at PICUM, we use the term ‘child’ rather than ‘minor’ as the UN Convention refers to ‘rights of the child’ and has near universal ratification hence an overall global acceptance of the legal age limit for “children.”

4 UNICEF, IOM, UN Human Rights, Save the Children, ECRE, PICUM and Child Circle, 2019, [Guidance to respect children’s rights in return policies and practices Focus on the EU legal framework](#), p. 5

5 Council of Europe, 2022, [Appendix to Recommendation CM/Rec\(2019\)11 Guiding principles and implementing guidelines for effective guardianship for unaccompanied and separated children in the context of migration](#), p. 12.

6 *ibid.*

7 Note that EU laws on migration often refer to ‘legal representative’ instead of guardian, and that different definitions and policy frameworks exist. See for instance European Migration Network, 2024, [Guardianship of unaccompanied minors](#)

8 EU Fundamental Rights Agency, [Free legal aid in immigration procedures](#), webpage [checked on 10 July 2024]

A **life project** is “a plan, drawn up and negotiated between the minor and the authorities in the host country, represented by a designated professional, with contributions from a variety of other professionals. Life Projects are holistic, personalised, flexible tools.”⁹ It “takes account of a variety of past and underlying issues (...) [and] links these to the present, including the aspirations and perceptions of the minor, the legal situation and opportunities both in the host country and the country of origin, and seeks to clarify and enhance the minor’s future prospects by ensuring that best interests are respected, rights are upheld and that the minor is supported to develop the skills necessary to become a full and active participant in society.”¹⁰

An **undocumented migrant** lives in a country where their residence is not officially recognized. Many have had residence permissions linked to employment, study, family, or international protection, but those permits were either temporary or precarious and their validity expired. Children who are born to undocumented parents inherit this precarious residence status.

Regularisation refers to any process or procedure through which someone can obtain a residence permit from a relevant government authority authorising – ‘regularising’ – their stay in the country they reside in. The person applies for these procedures from inside the country, in contrast to residence and work permits which must be applied for from another country. Two main subsets of regularisations exist: regularisation programmes, which have a limited time period in which to apply, and ongoing regularisation mechanisms, with applications accepted on a rolling basis.¹¹

Transition into adulthood can be understood as “the assumption of new roles and tasks related to the acquisition of autonomy and social integration, that culminates in the achievement of education, training, work, mature relationships, financial and housing independence.”¹²

9 Drammeh L, 2010, [Life Projects for unaccompanied migrant minors. A handbook for front-line professionals](#), Council of Europe Publishing, p. 9

10 Drammeh L, 2010, [Life Projects for unaccompanied migrant minors. A handbook for front-line professionals](#), Council of Europe Publishing.

11 Definition taken from PICUM, 2023, [Regularisation mechanisms and programmes: why they matter and how to design them](#)

12 López, M.L., Santos, I., Bravo, A. and del Valle, J.F., 2013, The process of transition to adulthood of young people fostered by the child welfare system. *An. Psicol.*, 29, 187–196; cited in Gullo, F., García-Alba, L., Bravo, A., del Valle, J.F., 2021, [Crossing Countries and Crossing Ages: The Difficult Transition to Adulthood of Unaccompanied Migrant Care Leavers](#), *International Journal of Environmental Research and Public Health*, 18, 6935; also cited in PICUM, 2022, [Turning 18 and undocumented: supporting children in their transition into adulthood](#).

Why this guidance?

It has become clear to us, thanks to our longstanding work on transition into adulthood, that children's and young people's ability – or inability – to access a residence permit that lasts into adulthood is a pivotal issue. All of our lives are defined by the residence status that we have – regular or irregular, secure or insecure. Our residence status, and often the residence permit that is attached to it, impacts whether we can access the services that we need, and build the future that we want for ourselves and our family. That is no different for the many migrant children and young people who are transitioning into adulthood in Europe.

But countless barriers prevent children and young people from accessing a secure residence status or permit that lasts into adulthood. Not the least because migration systems overall do not usually include sound best interests of the child procedures. There's also a lack of regularisation mechanisms in some countries.¹³ Where regularisation mechanisms do exist, they can be difficult to access for children or young people.

This particular publication builds on the extensive mapping of issues concerning transition into adulthood¹⁴ and aims to help those who draft policies concerning residence permits to think through the issues that are particularly important for migrant children and young people. It also aims to give tools to the many social workers, lawyers, guardians and other professionals who help migrant children and young people access a residence status/permit.

Much needs to be done to enable all children and young people to begin their lives as adults from the safety that a secure residence permit provides, but it is feasible. By implementing and investing in the measures listed in this guidance, governments can create a safe(r), more stable launching pad for these children and young people, while also meeting their international fundamental and child rights commitments.¹⁵

13 See PICUM, 2022, [Turning 18 and undocumented: supporting children into adulthood](#), Annex 2 for in depth descriptions of the regularisation mechanisms available to undocumented children and young people transitioning into adulthood in Belgium, Germany, Greece, Spain, Sweden and the UK. At the time (2022), only Germany and Spain had mechanisms in place that helped prevent children from ageing out into undocumented adulthood.

14 For example PICUM, 2022, [Turning 18 and undocumented: supporting children into adulthood](#); Oxfam and Greek Council for Refugees, 2021, [Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands](#); ISMU Foundation, Unicef, UNHCR and IOM, 2019, [At a Crossroad. Unaccompanied and Separated Children in their Transition to Adulthood in Italy](#); European Migration Network, 2022, [Transition of unaccompanied minors to adulthood](#), EMN Inform

15 For children: freedom from discrimination (art 2 UN Child Rights Convention - UNCRC), primacy of the interests of the child, protection and care (art 3 UNCRC, art 24 Charter of Fundamental Rights of the EU - CFEU), having one's views heard (art 12 UNCRC, art 24 CFEU), protection from violence (art 19 UNCRC), right to protective care (art 20 UNCRC), protection and support to child asylum seekers and refugees (art 22 UNCRC), highest attainable standard of health (art 24 UNCRC), etc. For young people: right to work (art 6, UN Convention on Economic, Social and Cultural Rights - UNCESCR), adequate standard of living (art 11 UNCESCR), physical and mental health (art 12 UNCESCR), education (art 13 UNCESCR), self-determination (art 1 UN Convention on Civil and Political Rights - UNCCPR), effective remedy (art 2 UNCCPR), freedom from torture or cruel treatment (art 7 UNCCPR), etc.

Securing a residence permit that lasts into adulthood is a crucial step in the complex process of acquiring life skills, building a network and figuring things out that is the transition into adulthood. PICUM's publication [Stepping up: a collection of projects and practices helping migrant children transition into adulthood](#) provides inspiration for practitioners on how to provide support in a wide range of areas like housing, care and aftercare, mental health support, etc.

Designing regularisation mechanisms for children and young people transitioning into adulthood

One may think that all residence procedures, whether regularisation mechanisms, programmes or initiatives, should be designed the same way for everyone. The idea that equality means equity. But that is not true. Regularisation measures should be designed with the people involved in mind – both the applicants and the administrative personnel processing them. In this particular case: with migrant children and young people in mind.

To help this move to human-centered migration and residence procedures, we cover different aspects of these procedures here: the elements all residence procedures should have, those that should be put in place for children and young people specifically, and additional aspects of some migrant children and young people that should be catered to.

While these should all be in place, some elements need to be adapted to the people applying or most likely to apply for the permit. In this case: children and young people, who are either unaccompanied or part of a family, and are either undocumented or have an insecure residence status (e.g., temporary permit, suspension of deportation). The rest of this paper dives into these different aspects and preconditions that need to be in place or tailored to children and/or young people.

We indicate with which of the ten elements the aspects listed below intersect.

Ten key elements that help make regularisation measures fair and humane

For any regularisation programme, mechanism or initiative to work well and be effective, quick, humane and fair, they must meet the necessary safeguards and have certain characteristics. Based on PICUM and its members' expertise, we identified ten key elements in our report [Regularisation mechanisms and programmes: Why they matter and how to design them](#).¹⁶

These are:

1. Undocumented people themselves can apply, including children.
2. Civil society, including migrant and refugee-led associations, are involved in the design, implementation and evaluation of the scheme.
3. Decisions are based on clear, objective criteria.
4. Reasons for refusal are documented and argued and can be appealed.
5. Decisions are made in an independent and impartial way and are informed by experts relevant to the criteria assessed.
6. The procedure is accessible in practice.
7. Procedural safeguards are in place.
8. A provisional permit¹⁷ that gives access to services, justice and the labour market is issued during the application process.
9. The resulting residence permit is secure and long-term, gives access to services and the labour market, counts towards settlement and citizenship, and does not depend on anyone else.
10. The regularization measure prevents irregular stay and work and is accompanied by support measures.

¹⁶ PICUM, 2023, [Regularisation mechanisms and programmes: Why they matter and how to design them](#)

¹⁷ The term 'temporary status' is used in the 2023 report, but 'provisional permit' may be more self-explanatory.

Best interests of the child procedures: Putting the child's best interests at the center of migration systems and decisions

Key elements 3, 4, 5, 6, 7

In 2019, United Nations agencies, intergovernmental organisations and child rights organisations published guidance for EU policy makers and government administrations on how to develop policies and procedures that ensure return decisions comply with children's rights. The document, titled [Guidance to respect children's rights in return policies and practices: Focus on the EU legal framework](#), elaborates a best interests (of the child) procedure.

The best interests of the child procedure is a "documented, individual and robust procedure to examine the best interests of the child [that] must precede and inform any decision to issue a return decision/ order to leave the territory."¹⁸ It should be put into motion whenever government authorities come into contact with an undocumented child or whenever a final, negative decision is issued, a permit is revoked or an extension is refused (for all permits, regardless of grounds).¹⁹ The best interests procedure to find a durable solution must meet the following characteristics:

- Aim to identify a durable solution, considering all options (stay in country of residence, (re)integration in country of origin, (re)integration in a third country²⁰).
- Be a formal, individual procedure examining all aspects of the child's situation.
- Be independent and impartial: decision-makers should have no conflict of interests.
- Be multi-disciplinary (child protection actors, legal representative, parents, guardian and others as needed are involved).
- Duly hear and consider the views of the child throughout.
- Provide child-friendly information, counselling and support.
- Include legal assistance.
- Include a provisional residence permit and access to services during the procedure.
- Lead to a reasoned, documented decision identifying the durable solution chosen.
- Include the right to appeal with suspensive effect.
- The durable solution chosen should be discussed with the child and a implementation plan developed with them.

18 UNICEF, IOM, UN Human Rights, Save the Children, ECRE, PICUM and Child Circle, 2019, [Guidance to respect children's rights in return policies and practices Focus on the EU legal framework](#), p. 5

19 The procedure must also be implemented in decisions that could lead to the return or removal of one of the child's caregivers, as removal of a parent may amount to arbitrary or unlawful interference with the child's family life.

20 Where the child has a pre-existing right to reside, for instance to reunite with family living in the third country.

Several measures should be in place as part of the best interests procedure to limit the challenges experienced during the transition into adulthood:

- If the durable solution identified is 'stay in the country of residence', the child/young person should be issued a secure, long-term or settled residence status.
- If the child turns 18 during the best interests procedure, it should be continued with the same safeguards.
- Support services should not abruptly end but foresee a transitional period of after care.
- Young people should be duly prepared, including being provided with timely information about their residence status and options, in a language and manner they can actually understand, as well as free, quality legal counselling.

- If children have only been granted a temporary residence status, States should both ensure that it enables them to complete any ongoing education or training after they turn 18, and ensure that they have clear and accessible options to easily transition into another status. Residence permits should not end at 18.
- States should provide avenues for young people to continue residence, or apply for different residence and work permits on a variety of grounds.

Member States and the EU are slow to integrate best interests of the child procedures in their legal frameworks.²¹ Because the reality today is in part a consequence of not having these in place, some of the recommendations in this publication will either refer to best interests of the child procedures, or try to alleviate the consequences of not having them in place.

21 Half of EU member states and Norway report having legal or policy provisions requiring the assessment of the best interests of the child before issuing a return decision for unaccompanied children. However, as far as we are aware, no EU member state has included an in-depth, formalised procedure assessing the best interests and identifying a durable solution for all undocumented migrant children – both those who are accompanied as well as those who are unaccompanied – in their migration laws. Some notable practices do exist for unaccompanied children, such as the establishment of an advisory committee proposing a durable solution for unaccompanied children in the Grand Duchy of Luxembourg. Sources: EMN, 2021, [Children in Migration. Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration](#); Strada lex Luxembourg, [Une commission consultative pour évaluer l'intérêt supérieur des mineurs non accompagnés](#) [checked on 20 September 2021].

Specifics of the residence permit issued

Key element 9

Length of the resulting permit

When a residence permit is issued based on the assessment that it is in their best interests to live in the country of residence, the child should be issued with a long-term residence permit (see above). However, we recognize that many children and young people will be given residence permits on other grounds, most of which will be temporary at first.

Twenty-four months should be the minimum length of any temporary residence permit.²² Long-term permits create mental, social, and financial stability for people. It is also more difficult to find work, internships, training or housing with a temporary permit, as employers or landlords might be sceptical

and/or the permit's validity end in the middle of a contract. Renewal procedures may also take a long time, and always contain a risk of losing the permit and becoming undocumented. If a temporary permit is issued, it should be of sufficient length and its renewal should be automatically reviewed for free.

Children transitioning into adulthood require additional safeguards and attention. The length of the permit being tied to the person's age (e.g. the person being a child) is a major issue concerning ageing out in Europe.²³ Temporary residence permits should therefore be valid for at least 24 months and last into adulthood for at least nine months, if the child turns 18 during the permit's validity.

Grounds for stay

A wide range of grounds for stay are recognized on EU level and by governments across the region. They include: protection (asylum, subsidiary, temporary), work and job search, studies/schooling, best interests of the child, social ties and family life, non-refoulement, the inability to return, being a victim of crime or of trafficking, medical needs/treatment, statelessness, having been born in the country, being an unaccompanied child, etc. Some of these can be invoked when undocumented (regularisation mechanisms), some cannot and can only be applied for by migrants while they have a valid residence permit (e.g., to transfer into).

We recommend that governments recognize these various grounds for stay in their migration law, in addition to integrating a best interests of the child procedure in their migration law/system. Going beyond study-based permits is especially important for migrant children and young people as they may have lost years of schooling before, during and after their migration to the country of residence. The professionals who assist and advice children and young people who are undocumented or risk becoming undocumented because their current permit will lapse, must know and understand these residence permits and their related procedures. They must be properly trained.

²² For examples of permits that are at least 24 months long, see PICUM, 2023, [Regularisation mechanisms and programmes: Why they matter and how to design them](#), pp. 49-52.

²³ PICUM, 2022, [Turning 18 and undocumented: supporting children into adulthood](#); European Migration Network, 2022, [Transition of unaccompanied minors to adulthood](#), EMN Inform

A note on residence status before the 18th birthday

This paper focusses on access to secure residence permits: residence permits that last, are difficult to lose, allow the child/young person to study and work in line with their skills and aspirations and (re)unify with their family if wished/applicable. The absolute minimum is for residence permits to last into adulthood and not end on the child's 18th birthday – even though this continues to be the case for certain permits in at least 13 European countries.²⁴

If a State has the policy to issue temporary residence permits to children because they are children/underage, then we recommend that this permit is extended for at least nine months²⁵ into adulthood or until the end of the countries' aftercare policies, to allow the child/young person to access permits on other grounds.

This requires the State to design and implement regularisation mechanisms that are accessible for young people in parallel. Spain's 2021 reform benefiting former unaccompanied children should be seen as an example to follow, as it allowed unaccompanied children (teenagers) to work, thereby preparing their later financial independence and ability to apply for a labour-based residence permit. It also recognized that young people in general earn less, and lowered the minimal required income to regularise through work.²⁶

A note on suspensions of deportation

Several countries around the world, including some EU Member States, have a policy of suspending certain deportation (or return) orders.²⁷ What these suspensions look like in practice – who decides on them, what grounds give rise to them and what happens to the people who are subjected to them – differs widely. In the context of transition into adulthood and ageing out, unaccompanied and

separated children are more often the explicit subject to these policies compared to children in families. For instance, Germany reported issuing unaccompanied children with a 'Duldung' status (i.e., a suspension of deportation) in 2019.²⁸ Other European countries issue return decisions to unaccompanied children, but do not usually implement them.^{29 30}

24 Specifically for unaccompanied children. Source for 13 EUMS: European Migration Network, 2022, [Transition of unaccompanied minors to adulthood](#), EMN Inform.

25 Analogous to the minimal length of the 'job seekers permit' for third country nationals who graduated from EU colleges and universities, the [Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing \(recast\)](#).

26 PICUM, 2022, [Turning 18 and undocumented: supporting children into adulthood](#), Annex 2: Spain; PICUM, 4 April 2023, [Spain: over 16.000 young migrants obtain residence permits thanks to 2021 reform](#), blog.

27 Some examples include the 'Duldung' statuses in Germany, the Deferred Action for Child Arrivals (DACA) programme in the USA, and suspensions of deportation for pregnant women (Germany, Belgium). Sources: Handbook Germany, [Tolerated Stay \("Duldung"\)](#), webpage [checked on 7 August 2024]; Boundless, [Deferred Action for Childhood Arrivals \(DACA\), Explained](#), webpage [checked on 7 August 2024]; Dienst Vreemdelingenrecht en Internationaal Familierecht, [Medische situaties](#), webpage [checked on 7 August 2024]

28 European Migration Network, 2021, [Children in Migration: Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration](#), footnote 364.

29 Ten EU Member States, notably Belgium, Cyprus, Greece, Hungary, Ireland, Italy, Malta, Slovakia and Slovenia, issued return decisions to unaccompanied children but did not usually enforce them in 2021. European Migration Network, 2022, [Transition of unaccompanied minors to adulthood](#), EMN Inform, Table 1

30 For an overview of 29 countries' policies regarding removals of unaccompanied children and providing a temporary residence status until the 18th birthday in 2019, see PICUM, 2022, [Turning 18 and undocumented: Supporting children in their transition into adulthood](#), Annex 1.

Although one can argue that suspensions of deportation can, by themselves, be lifechanging when they include access to services and the labour market,³¹ they are fundamentally insecure. Suspensions of deportation do not amount to a secure residence status as people can still be deported, often based on the initial return order/decision. People living with a suspension of deportation cannot build or even imagine their futures and contribute in full to society. For unaccompanied children whose deportation is suspended until their 18th birthday (either formally or informally³²), suspensions of deportation are especially perturbing. According to the European Migration Network, around half of EU Member States do not enforce return decisions issued to unaccompanied children until the child turns 18.³³ States justify such suspensions of deportation by arguing that the removal is not in the best interests of the child, that it is “cumbersome” to verify and prove the return conditions set out in article 10 of the Return Directive³⁴ are met, or that they cannot meet them.³⁵ So, they suspend the child’s deportation until they are no longer children, and the return preconditions no longer apply.³⁶ However, the reasons for the return

decision are rarely reassessed, thereby resulting in young people being ordered to leave or being deported based on older, and possibly no longer valid, return decisions.

The deportation of young people immediately after their 18th birthday was also condemned by the EU Court of Justice in 2021. In *TQ v Staatssecretaris van Justitie en Veiligheid*, which concerned an unaccompanied child who was to be deported from The Netherlands to Guinea on his 18th birthday, the Court underlined that EU member states must refrain from keeping children in limbo until their 18th birthday, and then forcibly return them, because it is at odds with the child’s best interests.³⁷

If a State finds that a return decision cannot be implemented for legal or practical reasons, they should issue a residence permit to the person concerned (and their family, the case being).³⁸ Children whose residence application was rejected should enter a best interests of the child procedure (see above), and given a provisional permit until a durable solution is identified.³⁹

31 Not all suspensions of deportation give access to services or the labour market. For example, Greece suspends people’s deportation for six-month periods at a time without giving people any access to the labour market, services or supports (Art. 24 §2 of law [3907/2011](#). See also PICUM, 2022, [Turning 18 and undocumented: Supporting children in their transition into adulthood](#), annex 2 and PICUM, 2022, [Barriers to return: protection in international, EU and national frameworks for technical information](#).)

32 Five Member States, notably Bulgaria, Czech Republic, France, Italy and Slovakia reported not issuing return orders to unaccompanied children until they reach adulthood in 2021. (European Migration Network, 2022, [Transition of unaccompanied minors to adulthood](#), EMN Inform, Table 1) While this does not technically constitute a suspension of deportation, these result is the same if the grounds for the return (and stay) are not reassessed at 18.

33 European Migration Network, 2022, [Transition of unaccompanied minors to adulthood](#), EMN Inform.

34 These conditions include “[being] satisfied that [the UASC] will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.” Article 10 of the EU [Return Directive](#).

35 European Migration Network, 2022, [Transition of unaccompanied minors to adulthood](#), EMN Inform; EMN, 2020, [Approaches to unaccompanied minors following status determination in the EU plus Norway](#)

36 European Migration Network, 2022, [Transition of unaccompanied minors to adulthood](#), EMN Inform.

37 CJEU, 14 January 2021, [Case of TQ v Staatssecretaris van Justitie en Veiligheid](#), Press Release.

38 See also, PICUM, 2022, [Barriers to return: Protection in international, EU and national frameworks](#).

39 See section “Best interests of the child procedures: Putting the child’s best interests at the center of migration systems and decisions” above and footnote 21.

Child-specific procedural safeguards

Key element 7

Child protection first

In order to ensure that migrant children are adequately protected from harm, child protection should always be prioritised over immigration enforcement. In addition to the obvious conflict of interest when immigration enforcement actors are the main responsible for child protection, they have also been the cause of harm to children (due to immigration detention, which is always a child rights violation and never in a child's best interest⁴⁰; violence by border guards; push backs, etc).⁴¹ To prevent harm and

truly put children's best interests first, governments should prioritise building integrated child protection systems, in line with the 2024 European Commission Recommendation on integrated child protection systems.⁴² Unaccompanied children should be placed in community-based and foster-care based care settings, while child protection actors should also always be present in spaces where migrant families with children are (borders, reception centers, detention, return centers, etc).

Free legal aid

Asylum and migration procedures have become increasingly complex for people to navigate – arguably even more so for children and young people and other people in vulnerable situations. Having access to quality legal assistance in the form of free legal aid remains fundamental to ensuring children's and young people's rights are respected, including access to justice, a fair procedure, hearing and remedy and respect for the principle of equality of arms. The legal aid given to children also needs to support the determination of the child's best interests

and defend their views and interests, “especially when there are conflicting interests, such as restrictive migration policies.”⁴³

The right to legal aid is enshrined in several human rights conventions and applicable EU laws.⁴⁴ However, the vast majority of member states' systems do not foresee free legal aid for children in migration procedures.⁴⁵

40 CMW and CRC Committee, Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return, CMW/C/GC/4-CRC/C/GC/23, (November 16, 2017), para. 10-13; SRHRM, Ending immigration detention of children, para. 86. For more on this, see PICUM, 2022, [Immigration detention and de facto detention: what does the law say?](#)

41 For examples, see PICUM, 2023, [Key aspects of child protection systems that help protect all children from harm PICUM submission on integration child protection systems to the European Commission consultation](#)

42 European Commission Recommendation on [developing and strengthening integrated child protection systems in the best interests of the child](#) (2024)

43 Vanessa Sedletzki, 2020, [Provision of legal aid to children on the move in Europe and Central Asia. Lessons from Bosnia and Herzegovina, Bulgaria, Greece, Italy and Turkey](#), UNICEF Regional Office for Europe and Central Asia, p. 11

44 Including article 6 (3)(c) of the [European Convention on Human Rights](#), article 47 of the [Charter of Fundamental Rights of the European Union](#) and article 13 [EU Return Directive](#).

45 According to the EU Agency for Fundamental Rights, only Belgium and Bulgaria provided free legal aid (without any income requirements) to children in migration procedures in 2017. Source: EU Agency for Fundamental Rights, [Free legal aid in immigration procedures](#), webpage [checked on 10 July 2024]

All children and young people involved in migration procedures must be entitled to free, quality legal aid in order to ensure that they experience a fair procedure. It also helps them become legally literate (see below). Providing free, quality legal aid to people

involved in migration procedures also helps ensure that governments can trust they have put quality procedures in place, and the identified durable solution is the best.⁴⁶

Right to be heard & participate in proceedings

Article 12 of the UN Convention on the Rights of the Child (UNCRC) specifies that children should have the opportunity to be heard in any legal or administrative proceeding affecting them, including migration procedures.⁴⁷ In order to exercise this right, both unaccompanied children and children in families must be able to present arguments why they fulfil grounds for stay in a safe, and age-appropriate manner and setting. They must also receive

accessible, age-appropriate information on their rights and entitlements, possible obligations within the procedure and ways to ensure that their voice is heard and given due weight in the procedure. The right to be heard and participate in proceedings requires, in particular, access to free, quality legal aid and, for unaccompanied and separated children, the appointment of a qualified guardian/legal representative.

Needs-based support instead of age-based support

All support given to children and young people transitioning into adulthood should be issued based on their needs, not on their age alone. While age will be a factor to consider, it should never be the determining factor. Support will also be more effective when

it is specifically designed to meet the unique needs of the child / young person. A needs-based assessment should be conducted early on, and updated as necessary.

⁴⁶ For more on this, see for instance Vanessa Sedletzki, 2020, [Provision of legal aid to children on the move in Europe and Central Asia. Lessons from Bosnia and Herzegovina, Bulgaria, Greece, Italy and Turkey](#), UNICEF Regional Office for Europe and Central Asia; ECRE, 2016, [Right to Justice: Quality Legal Assistance for Unaccompanied Children. Annex 1: Guiding principles for quality legal assistance for quality legal assistance for unaccompanied children](#); FRA, 2021, [Free legal aid for returnees deprived of liberty](#), report

⁴⁷ Committee on the Convention on the Rights of the Child, 2009, [General Comment No. 12, 'The right of the child to be heard'](#), CRC/C/GC/12.

Care, aftercare and its intersection with accessing a secure residence status or permit

Children's and young people's residence status and their access to a (more) secure residence status (if it's insecure) should be part of the care and aftercare they receive. Their options should be discussed while still in care, starting as early as possible and well before they turn 18.⁴⁸ This can be part of an already-existing care practice, like developing life projects⁴⁹ or aftercare plans, and can be fed by migration-specific methodologies like the future orientation methodology.⁵⁰

Although the best moment to start discussing future options will depend on the child, we recommend starting no later than 1.5 years before their 18th birthday or as soon as possible if the child enters

care closer to the 18th birthday. However, where children's access to residence permits depends on their age of application (either formally or in practice⁵¹), the professionals surrounding the child⁵² should take that into account when deciding to start discussing and preparing residence options.

The UN Guidelines for Alternative Care of Children⁵³ stipulate that "access to social, legal and health services, together with appropriate financial support, should also be provided to young people leaving care and during aftercare." These are not only important for the young person's wellbeing, but also impact their ability to regularise their stay.

48 Similar to UN General Assembly, 2009, [Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly](#), §134

49 Committee of Ministers of the Council of Europe Recommendation [CM/Rec\(2007\)9](#) to member states on life projects for unaccompanied migrant minors; Drammeh L, 2010, [Life Projects for unaccompanied migrant minors. A handbook for front-line professionals](#), Council of Europe Publishing

50 Agentschap Integratie en inburgering & Kruispunt Migratie-Integratie, 2015, [Future orientation Working on meaningful prospects for those with a precarious residence status](#); see also PICUM, 2024, [Stepping up: a collection of projects and practices helping migrant children transition into adulthood](#)

51 See for example PICUM, 2022, [Turning 18 and undocumented: supporting children in their transition into adulthood](#), Annex 2: Belgium.

52 Care worker, aftercare worker, guardian, lawyer or legal professional, depending on the situation.

53 UN General Assembly, 2009, [Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly](#), §136

Other things to keep in mind

Policy makers and practitioners should keep additional things in mind when designing regularisation measures that involve children and young people in migration, or when helping them navigate these procedures. These include (legal and biological) age and

specific aspects like statelessness, past experiences of violence and the degree of literacy, and ensuring agency, asking consent, and enabling coordination between stakeholders.

Age

A person's age is obviously central to the issue at hand, as it impacts the regularisation mechanisms and the support they can access.⁵⁴ However, it also impact people's, and especially children's, ability to think conceptually. As researchers explain, "[t]he ability to think in logical concepts is connected to biological age, and development of concepts is further related to individuals' interaction with their sociocultural environment."⁵⁵ They found that younger children are less detailed when freely recalling memories, and accurate responses were positively correlated with the degree of development of logical conceptual thinking. Logical conceptual

thinking of older children and adults alike is related to "the amount of logical concepts that have been internalized through interaction with the sociocultural environment and are specifically influenced by education."⁵⁶ In layman's terms: a person's ability to think and explain conceptually depends, amongst others, on their biological age and, past age eight or nine, their education and the amount of logical concepts they've been confronted with. This may, in turn, impact people's ability to understand and engage with residence procedures,⁵⁷ including interviews, providing proof and substantiating claims.

Agency and consent

It is important to ensure the child or young person's agency⁵⁸ to shape their lives is supported; including the agency to apply for and navigate residence and possible appeal procedures. This is tightly connected to their ability to formally consent to procedures and processes, including when others must legally act for them (e.g. because of the person's age). For instance, when national law does not allow a child to apply for a residence permit directly, their guardian or parent

should make sure to follow the child's wishes in doing so after making sure that the child understands the requirements and consequences of applying and not applying.

Agency and consent are also intertwined with age, as laws may not allow children to consent to certain acts until they reach a certain age.

54 PICUM, 2022, [Turning 18 and undocumented: supporting children in their transition into adulthood](#); Oxfam and Greek Council for Refugees, 2021, [Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands](#); ISMU Foundation, Unicef, UNHCR and IOM, 2019, [At a Crossroad. Unaccompanied and Separated Children in their Transition to Adulthood in Italy](#).

55 Murnikov V. and Kask K., 2021, [Recall Accuracy in Children: Age vs. Conceptual Thinking](#), *Frontiers in Psychology* 12:686904, p.6. DOI: 10.3389/fpsyg.2021.686904

56 Ibid.

57 And age assessment procedures.

58 Agency can be understood as "the socio-culturally mediated capacity to act." Ahearn, L.M., 2001, [Language and agency](#), *Annual Review of Anthropology*, 30(1), 109–137, p. 112.

Intersectionality

While many migrant children and young people transitioning into adulthood are or find themselves in situations that make them vulnerable to harm, some have aspects that make them more vulnerable or vulnerable to specific harm. It is important that these are recognized and addressed appropriately, including in the context of regularisation / applying for a residence permit.

Professionals should make sure to screen and be attentive to these and the many other aspects of the child or young person and their lives that interact with their ability to engage with their regularisation application. Mitigating measures should be put into place when necessary.

Statelessness

Certain children or young people will be stateless,⁵⁹ which can be either a grounds for or a barrier to stay, depending on the country the person finds themselves in. Few European countries have dedicated statelessness determination procedures, and being recognised as a stateless person does not automatically result in a residence permit in some.⁶⁰ And, “where procedures and/or a protection status do exist, common issues include limited rights to reside and to access the labour market, healthcare, or social security, lack of awareness of the procedure, barriers to accessing legal aid, and lack of protection against removal and detention during the procedure.”⁶¹ In addition and depending on the country, the child

or young person will likely not have the necessary identity documents necessary to access services or receive a residence permit on other grounds.

Past experience of violence

Many children and young people who migrated themselves⁶² experienced violence and hardship along the way.⁶³ The harm could have been done by random strangers, by border guards and even by the people who were meant to help them. These past experiences can be grounds for stay, but can also prevent children or young people from trusting well-intentioned professionals. They can also have caused undiagnosed or untreated mental and physical health issues, which can delay or otherwise impact the regularisation. Traumatic experiences can in particular impact hearings intended to ascertain the grounds for stay (e.g., in applications for international protection, but also for victims of crime or trafficking).

Degree of literacy

Children and young people’s degree of literacy can impact all aspects of their experience of migration procedures, including regularisation procedures. It will not only impact their understanding of what’s going on, what options they have and the interactions they have with the people around them, it may also impact their ability to regularise. Illiteracy

59 For more on this, see for instance European Network on Statelessness, 2020, [No child should be stateless: Ensuring the right to a nationality for children in migration in Europe](#)

60 Consult the [Statelessness Index](#) for an analysis and description of the legal framework in 32 Council of Europe member states.

61 Statelessness Index, [Statelessness determination and status](#) [checked on 11 July 2024]

62 As opposed to those who were born to undocumented or migrant parents in the country of residence.

63 See for instance University of Sarajevo and Save the Children, 2022, [“Wherever we go, someone does us harm.” Violence against refugee and migrant children arriving in Europe through the Balkans](#); Adeyinka S, Lietaert I, Derluyn I., 2023, [It Happened in the Desert, in Libya and in Italy: Physical and Sexual Violence Experienced by Female Nigerian Victims of Trafficking in Italy](#). International Journal of Environment Research and Public Health. 28;20(5):4309

or low-literacy has been known to impact hearings in asylum procedures, for example.⁶⁴ But it can also indirectly or directly impact children's or young people's ability to regularise based on studies, training or work (for instance, the ability to meet high income criteria) or naturalise/acquire citizenship.⁶⁵

Knowing the local language and schooling are important for socialisation, but the reverse is true too: socialising impacts language learning. Unless the child/young person is fluent in the language of the place they live, learning the local language is necessary to get to know others, work with the professionals that assist them, and engage with services and procedures.⁶⁶

This brings in the element of time: "both that it takes a long time to develop literacy skills such as fluency and accuracy, as well as that reading and writing in a second language takes time."⁶⁷ Many children, especially unaccompanied children, may not have the luxury of time, though, as they are often 16 years or older when taken into care by a Member State⁶⁸ and may not have much time in formal education.⁶⁹ So, while it is likely that a child or young person will become (more) literate in the local language if they can (continue to) go to school, measures need to be taken in the meantime. These can include oral and

visual explainers of the procedures in their mother tongue and working with interpreters.

In addition to general literacy, there's the issue of legal literacy: having the knowledge and skills required to interact effectively with the legal system.⁷⁰ The migration system is complex, ever-changing and dependent on the country one lives in. It is thus important that the people accompanying children and young people transitioning into adulthood are legally literate themselves, and are able to help the child/young person become it too. Correct information is key to ensure children/young people make informed choices and give informed consent. While all professionals surrounding the child/young person have a role to play, governments have the responsibility to inform people correctly and in an adapted way.

Another, related, element is the issue of digital literacy. Many countries have digitalised migration procedures in recent years, especially since COVID-19, or require online registrations for in-person meetings.⁷¹ And, while children and young people may be comfortable with smart phones or computers, many will still need support to navigate online administrative platforms, especially if there are not highly literate in the classic sense.

64 Maryns, K., 2022, [Linguistic vulnerability in refugee status determination](#), Presentation at NANSEN Colloquium

65 Vanbuel M., Bugge E. & Carlsen C. H., (forthcoming), Test taker background variables and outcomes of language and KoS tests for citizenship in Norway; mentioned in Hannes Carlsen C., Deygers B., van Oers R., & Rocca L., 2023, [The Consequences of Migration Tests on Low-Literate Adult Migrants: Teacher Opinions in 20 European Countries](#), AERA Online Paper Repository

66 Wedin, Å., 2020, [Literacy and Agency: The Case of Young Adults who Came to Sweden as Unaccompanied Asylum-seeking Minors](#), Scandinavian Journal of Educational Research, 64:4, 522-534, DOI: 10.1080/00313831.2019.1595710

67 Ibid., p. 532

68 For instance, 68% of unaccompanied children seeking asylum in 2023 were 16 or 17 years old. Source: Eurostat, [Asylum applicants considered to be unaccompanied minors by citizenship, age and sex - annual data](#) [checked on 30 July 2024]

69 Unsurprisingly, a higher age at admission in care and in school are risk factors for lower educational attachment and academic competency. Source: Khalifa Aleghfeli Y. and Hunt L., 2022, [Education of unaccompanied refugee minors in high-income countries: Risk and resilience factors](#), Educational Research Review vol 35, DOI: 10.1016/j.edurev.2022.100433

70 Definition taken from Zariski, A., 2014., [Legal literacy. An introduction to legal studies](#), AU Press

71 For instance, Belgium, Spain.

Coordination between stakeholders

Because all the different people and stakeholders involved in a child's or young person's life⁷² have their specific roles, it is important to ensure coordination and a flow of information amongst them. If it concerns an unaccompanied child, it should be up to the guardian⁷³ to ensure it. However, the child or young person should give consent before the guardian does so or shares information, including when they are or are becoming undocumented.

The further integration of child protection systems is an opportunity to ensure child-centered coordination. Indeed, the European Commission recommends Member States establish "a common framework for cooperation and coordination between professionals

working with or for children in legal proceedings or interventions that involve or affect children."⁷⁴ When developing such a framework, two things are especially important. First, including the safeguard that the child's/young person in care's residence status is not shared with immigration enforcement actors so as to ensure they continue to receive needs-based care and support. Second, ensuring that this coordination/framework is activated well before the 18th birthday, prepares handovers ahead of the child's ageing out and continues into adulthood as part of the aftercare. Identifying and implementing a durable solution in the best interests of the child should be a focus of the coordination.

72 The child/young person themselves, their family (whether in situ or abroad), guardian (if applicable), child protection professionals, lawyer, teachers, friends, social worker, reception staff, etc.

73 Legal representative

74 European Commission Recommendation on [developing and strengthening integrated child protection systems in the best interests of the child](#), §52.

Conclusions and recommendations

Until we have a system where a person's needs are the only condition to receive support, we must recognize that the transition into adulthood of migrant children and young people is intimately impacted by migration policies. Especially children's and young people's ability to access a secure residence status has turned out to be the key condition for them to experience a safe, supported transition into adulthood.

Much needs to be done to make this reality, but it is feasible. By investing in the measures listed below, governments ensure that they meet international child rights commitments. They also ensure that children and young people are better protected from harm and have a better chance at living up to their potential, which in turn benefits society on the whole.

Recommendations for policy makers:

Best interests of the child:

- Integrate a best interests of the child procedure to identify a durable solution in national and EU law (starting with the EU Return Directive);⁷⁵
- Prioritise child protection over migration enforcement by placing unaccompanied children in community-based and foster-care based care settings and by ensuring child protection actors are present in spaces where migrant families with children are (borders, reception centers, detention, return centers, etc);

Regularisation mechanism and procedures:

- Ensure the availability of fair and humane regularisation mechanisms on a variety of grounds in national law, which take into account children and young people's situations and opportunities.⁷⁶ Make sure grounds for stay are examined *ex officio* too;
- Issue residence permits to people (and their family, the case being) when it is found that a return decision cannot be implemented for legal or practical reasons, instead of issuing suspensions of deportation. Children whose residence application was rejected should enter a best interests of the child procedure, and given a provisional permit until a durable solution is identified;

⁷⁵ This first and ultimate safeguard ensures that no return decision is issued without the assurance that that return is both in the child's best interests and practically feasible – thus preventing long periods in limbo. And, if stay in the country of residence is deemed the durable solution, the child should be issued a secure residence status.

⁷⁶ Regularisation measures must not only meet the criteria all regularisation measures should meet, but should be designed with the specific situation and opportunities of children and young people in mind. Work-based permits should take into account that young people, in general, make less money than older adults. Study-based permits should keep in mind that many migrant children and young people have an interrupted, delayed educational career. Permits based on family or private life should take into account the formative impact of children's and young people's experiences in the country.

- Ensure that professionals adopt an intersectional approach and screen and are attentive to all aspects of the child or young person and their lives that interact with their ability to engage with regularisation/residence procedures. These facets can include being stateless, having experienced violence and one's degree of literacy. Put in place mitigating measures where necessary;
- Make sure that guardians/representatives of unaccompanied children are well versed in regularisation mechanisms and best interests of the child procedures;

Validity of residence permits:

- Extend the validity of residence permits that are issued to children because they are underage into adulthood. Ensure that they are extended for at least nine months into adulthood or until the end of the country's aftercare policies, to allow the child/young person to access permits on other grounds;
- Ensure that temporary residence permits are valid for at least 24 months and last into adulthood, if the child turns 18 in the meantime;

Coordination and cooperation:

- Establish a common framework for cooperation and coordination between professionals working with or for children in legal proceedings, ensuring that a firewall is put in place so that the support received is based on the child's / young persons' needs.

Procedural safeguards:⁷⁷

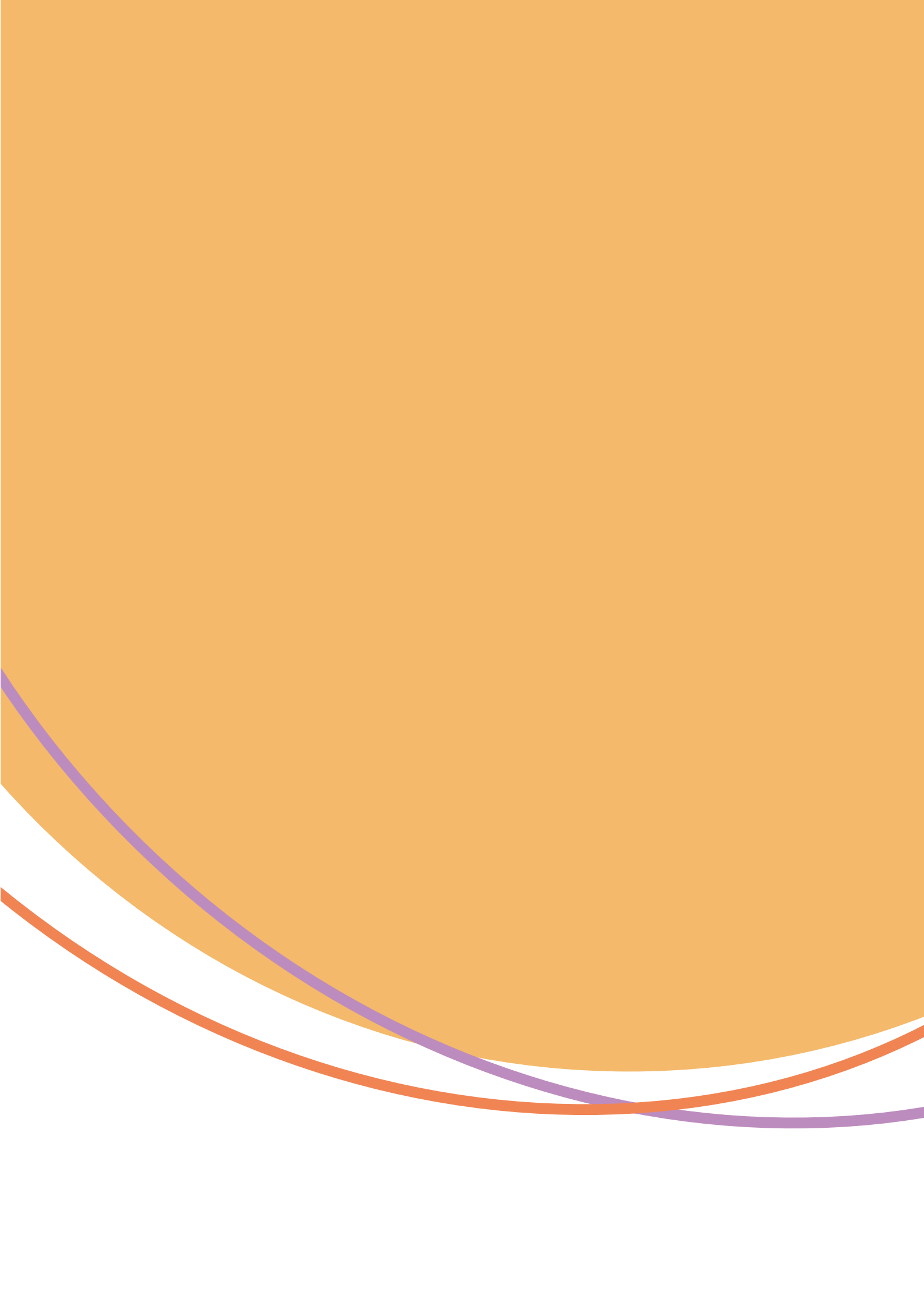
- Entitle all children and young people involved in migration procedures to free, quality legal aid;
- Ensure that children have the opportunity to be heard in any legal or administrative proceedings affecting them, including regularisation measures and appeals;

Care, aftercare and support:

- Clarify in law or policy that all children and young people are entitled to needs-based care, aftercare and/or support when transitioning into adulthood, so as not to exclude children or young people based on residence status;
- Make applying for and acquiring a secure residence status a mandatory part of the care and aftercare migrant children receive. It should be discussed and prepared as early as possible and no later than 1.5 years before the 18th birthday;⁷⁸

⁷⁷ See PICUM, 2023, [Regularisation mechanisms and programmes: why they matter and how to design them](#) for the procedural safeguards that should be in place in any regularisation mechanism or programme: accessibility, affordability, right to be heard, suspensive appeals, legal aid, independent decision making based on clear criteria, etc.

⁷⁸ Or earlier if acquiring a secure residence status depends, in practice or in law, on the age of application.





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